

DRAFT – FOR DISCUSSION PURPOSES

Proposed Regulation Order

AMENDMENTS TO THE NONVEHICULAR SOURCE, CONSUMER PRODUCTS, AND ARCHITECTURAL COATINGS FEE REGULATIONS

Note: The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to show deletions.

Amend section 90800.8(c), title 17, California Code of Regulations (CCR), to read as follows:

- (c) *Preliminary Determination of Fees to be Assessed.* No later than May 1 of the preceding fiscal year, the Executive Officer shall make preliminary determinations of all of the items in section (c)(1) through (c)(7), and shall provide written notice of the preliminary determinations to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5). The notice shall state that written comments regarding the preliminary determinations received by the Executive Officer by July 1 of the fiscal year will be considered by the Executive Officer in reaching final determinations.

(1) *Needed Revenues.* Except as provided in section 90805, ~~The~~ revenues needed to recover the costs of the state board for additional state programs related to nonvehicular sources, consumer products, and architectural coatings in the fiscal year. The revenues shall not exceed the amount authorized by state law for any fiscal year, and for the 2003-2004 fiscal years shall not exceed the amount specified in subdivision (f)(1) of Health and Safety Code section 39612 or such other amount as specified by the State Legislature. For fiscal year 2004-2005 and subsequent fiscal years, the total revenues collected from facilities may include a percentage increase in revenues by an amount not to exceed the annual percentage change in the California Consumer Price Index, as provided in Health and Safety Code section 39612(f)(2), if such an increase is necessary to collect the revenues authorized by the State Legislature for any fiscal year.

(2) *Adjustment Amount.* An additional adjustment amount, not to exceed 3 percent of the needed revenues, designed to recover unforeseen reductions in collections due to unexpected business closures and bankruptcies.

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(3) *Carry-over Balance.* The amount collected in the previous fiscal year in excess of or less than the needed revenues for that fiscal year.

(4) (A) *Emissions of Facilities Subject to Fees.* Except as otherwise provided in subsections (c)(4)(B) and (c)(4)(C), for each district, (1.) the name and address of each permitted facility that emitted 250 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available for all affected districts, and (2.) the total tons of each identified facility's emissions during the referenced calendar year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 250 tons or more in the year.

(B) For the South Coast Air Quality Management District (SCAQMD) only, the amount of each facility's emissions specified in subsection (c)(4)(A) shall be determined on a fiscal year instead of a calendar year basis. Emissions from facilities in the SCAQMD shall be determined for the fiscal year that begins during the most recent calendar year for which emission estimates are available for all affected districts. For example, if the 2001 calendar year is the most recent calendar year for which emission estimates are available for all affected districts, then all districts except the SCAQMD would identify facilities and submit facility emissions for the 2001 calendar year, and the SCAQMD would identify facilities and submit facility emissions for the 2001-2002 fiscal year.

(C) A facility shall not be included if its emissions would otherwise be included solely because the facility is in a district which is designated in section 60201 as not having attained the state ambient air quality standard for ozone solely as a result of ozone transport identified in section 70500, title 17, California Code of Regulations.

(5) *Consumer Products Manufacturers and Architectural Coatings Manufacturers Subject to Fees.* Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's consumer products or architectural coatings resulted in VOC emissions in the State of 250 tons or more during the same calendar year identified for facilities pursuant to section 90800.8(c)(4)(A).

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(6) *Fee per ton.* The fee per ton for the fiscal year, calculated in accordance with the following formula:

$$\text{Fee per ton} = \frac{R + A - C}{E}$$

Where

- R = The needed revenues identified in accordance with section (c)(1)
- A = The adjustment amount identified in accordance with section (c)(2)
- C = Carry-over balance determined in accordance with section (c)(3)
- E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from all permitted facilities in the state identified in accordance with section (c)(4), plus the total tons of VOCs emitted in annual amounts of 250 tons or more from consumer products and architectural coatings sold in the state as identified in accordance with section (c)(5).

(7) *Amount to be Remitted From Each Facility Operator, Consumer Products Manufacturer, or Architectural Coatings Manufacturer.* The dollar amount to be transmitted to the state board, calculated in accordance with the following formula:

$$\text{Amount to be transmitted} = F * D$$

Where

- F = Fee per ton as calculated in accordance with section (c)(6)
- D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from a permitted facility identified in accordance with section (c)(4), or the tons of VOCs emitted in annual amounts of 250 tons or more for a manufacturer, as identified in accordance with section (c)(5)

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Adopt new sections 90805 and 90806, title 17, CCR, to read as follows:

90805. Supplemental Fee Assessments for Facilities

(a) *Applicability.* This section applies in any fiscal year in which the State Legislature has authorized the state board to collect fees in excess of \$17.4 million to recover the costs of additional state programs related to nonvehicular sources, consumer products, and architectural coatings.

(b) *Determination of Supplemental Fees to be Assessed*

(1) *Needed Revenues.* The Executive Officer shall determine the needed revenues as specified in section 90800.8(c)(1). If the needed revenues are equal to or less than \$17.4 million, the revenues shall be collected from facilities, consumer products manufacturers, and architectural coatings manufacturers as provided in sections 90800.8 to 90803. If the needed revenues are in excess of \$17.4 million, the amount in excess of \$17.4 million shall be collected as supplemental fees from facilities, as provided in the following subsections.

(2) *Emissions of Facilities Subject to Supplemental Fees.* Any facility identified in section 90800.8(c)(4) is subject to the supplemental fee. The total emissions of each facility subject to the fee shall be determined as provided in section 90800.8(c)(4).

(3) *Supplemental Fee per ton.* The supplemental fee per ton for the fiscal year shall be calculated in accordance with the following formula:

$$\text{Supplemental Fee per ton} = S/SE$$

Where

S = The needed supplemental fee revenues identified in accordance with section 90805(b)(1).

SE = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from all permitted facilities in the state identified in accordance with section 90800.8(c)(4).

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(4) Supplemental Fee Amount to be Remitted from each Facility Operator.

The dollar amount to be transmitted to the state board, in addition to the amount remitted under section 90800.8(c)(7), shall be calculated in accordance with the following formula:

$$\text{Amount to be transmitted} = \text{SF} * \text{SD}$$

Where

SF = Fee per ton as calculated in accordance with section 90805(b)(3).

SD = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 250 tons or more from a permitted facility identified in accordance with section 90800.8(c)(4).

(c) Final Determination of Supplemental Fees to be Assessed.

(1) The Executive Officer shall make a final determination of the supplemental fees to be assessed as specified in section 90805(b), and shall provide a written fee determination notice to each district and to each facility operator identified in accordance with section 90800.8(c)(4). The Executive Officer may include the supplemental fee assessment in the fee determination notice provided under section 90800.8(d), or may use a separate fee determination notice to assess the supplemental fees.

(2) For the 2004-2005 fiscal year, the supplemental fee determination notices shall be provided no later than 30 days after the operative date of this section. For the 2005-2006 and subsequent fiscal years, the fee determination notices shall be provided within the time periods specified in section 90800.8(d), or as soon thereafter as practicable.

(d) Transmittal of the Supplemental Fees to the State Board

(1) Each facility operator that is notified pursuant to section 90805(c) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board for deposit into the Air Pollution Control Fund within 60 days after receipt of the fee determination notice. The supplemental fees shall be in addition to any other fees already authorized to be collected from such sources, including the fees collected pursuant to sections 90800.8 and 90802.

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(2) Newly Identified Facilities. Newly identified facilities are subject to the supplemental fees in the same manner that they are subject to the fees collected pursuant to sections 90800.8(e)(2)(A) and 90802. The Executive Officer shall collect the supplemental fees using the process for newly identified facilities specified in section 90800.8(e)(2)(A). The operator of each newly identified facility shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer.

(e) Optional Process for Districts to Collect Supplemental Fees from Facilities

(1) 2004-2005 Fiscal Year. Districts shall not have the option to collect supplemental fees from facilities for the 2004-2005 fiscal year.

(2) 2005-2006 and Subsequent Fiscal Years. Beginning with the 2005-2006 fiscal year, each district shall have the option for any fiscal year to collect supplemental fees from facilities instead of having the state board collect the fees. A district that chooses to collect the supplemental fees shall follow the process specified in section 90800.9(c) and (d) for fees collected pursuant to sections 90800.8 and 90802.

(f) Fee Payment and Collection.

(1) The Executive Officer shall notify and assess the operator of each facility subject to the supplemental fees in writing of the fee due as provided in this section. The fee shall be past due 60 days after receipt by the operator of the fee determination notice.

(2) Late Fees. The Executive Officer shall assess an additional fee on operators failing to pay the supplemental fee within 60 days of receipt of the fee determination notice. The Executive Officer shall set the late fee in an amount sufficient to pay the state board's additional expenses incurred by the operator's untimely payment.

(3) Any supplemental fees submitted to the state which exceed or are less than the costs to the state of additional state programs authorized or required by the State Legislature shall be carried over by the state for adjustment to the supplemental fees assessed in the subsequent fiscal year.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code.
Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

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90806. (a) If the State Legislature in any fiscal year specifies particular amounts or percentages that are to be collected from the categories of nonvehicular sources, consumer products, or architectural coatings, the Executive Officer shall comply with the Legislature’s direction notwithstanding the provisions of this subchapter.

(b) If the State Legislature modifies the 250 tons per year threshold specified in section 39612(d) or section 39613 of the Health and Safety Code, the modified threshold for nonvehicular sources, consumer products, or architectural coatings that is specified by the State Legislature shall be used in this subchapter instead of the existing 250 tons per year threshold.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code.
Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.